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COMMITTEE ON ARMED SERVICES

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July 19, 1976

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MEMORANDUM FOR MR. FRANK SLATINSHEK

Subject: Legislation to advance Lt. Gen. Vernon A. Walters on the retired list to the grade of lieutenant general and to receive retired pay based on that grade.

The following background is provided for your information.

General Walters is currently serving on active duty as a temporary lieutenant general. His permanent status is that of a major general, U.S. Army Reserve in the Retired Reserve.

On February 2, 1972 General Walters, then serving on active duty as a temporary major general, whose permanent grade was then colonel, U.S. Army Reserve, was, as required by 10 USC 3851 transferred to the Retired Reserve. (Such transfers do not confer entitlement to retired pay.) That section required that any permanent Reserve colonel or brigadier general who has a total of 30 "years service" and five years in permanent grade must be transferred to the Retired Reserve or discharged. Under 10 USC 1374 his grade in the Retired Reserve was the highest grade in which he had served satisfactorily as determined by the Secretary, namely major general.

Although transferred to the Retired Reserve he was retained on active duty under authority of 10 USC 672(d).

On April 10, 1972 he became Deputy Director of the CIA, having been appointed to that office with the grade of lieutenant general under 10 USC 3066. That section authorizes the President to appoint officers "of the Army on active duty" to positions of importance and responsibility which carry the grade of lieutenant general or general, and specifies that the appointee, while in that position will hold that grade if confirmed by the Senate.

Frank Slatinshek

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Except as described below, the grade in which an officer of the Army is authorized to be retired with pay, for nondisability reasons, is either the Regular or Reserve grade held at the time of retirement (10 USC 3961) or the highest temporary grade in which he serve on active duty satisfactorily as determined by the Secretary of the Army for not less than six months (10 USC 3963). However, 10 USC 3962 provides specifically that a Regular officer who has served in a position designated by the President as one of importance and responsibility under 10 USC 3066 and carrying the grade of lieutenant general or general may be retired in that grade "in the discretion of the President *** with the advice and consent of the Senate".

This provision in 10 USC 3962 which requires nomination and confirmation for retirement in grade O-9 or O-10 has been interpreted as overriding the provision in 10 USC 3963 which authorizes the Secretary to retire a member in the highest temporary grade satisfactorily held by that member for at least six months. However since 10 USC 3962 applies only to Regular officers, there is no existing statute for retiring a Reserve officer with 20 years or more of active duty as a lieutenant general or general.

There is a precedent for this proposal. Private Law 89-348 which was enacted on October 14, 1966 authorized the President to advance Robert Wesley Colglazier to the grade of lieutenant general on the retired list and to receive pay as a lieutenant general.

If General Walter could be retired under the Reserve retirement law (Title III, PL 810, Chapter 67 or Title 10 USC) he could be retired with the pay of lieutenant general without additional legislation, provided only that the Secretary of the Army found his service in that grade to be "satisfactory". However, since General Walter is eligible for retirement under 10 USC 3911 he is barred by 10 USC 1331 (a)(4) from retiring under the Reserve retirement law.

If General Walter was to be retired at any time before the next increase in retired pay, his retired pay as a major ^{general} would be \$2,796.93 monthly, whereas if he could receive the pay of a lieutenant general his pay would be \$3,101.93 monthly.

If this matter is to receive favorable attention, it would appear more appropriate to enact general legislation which would extend the provisions of 10 USC 3962 to Reserve officers. If that is done both categories--Regulars and Reserves would be treated alike. Similar changes would be required in the Air Force law. Whether similar changes would be required in Navy and Marine Corps law is not known.


ROY SPENCE